

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	CASE NO. 7:08-CV-064
v.	§	
	§	TRACT NO. RGV-RGC-1011
1.65 ACRES OF LAND, MORE OR LESS,	§	(Expired Access Easement)
SITUATED IN STARR COUNTY, TEXAS;	§	
AND ARNULFO GUERRA, AT AL.	§	

UNITED STATES OF AMERICA	§	
	§	CASE NO. 7:08-CV-248
v.	§	
	§	TRACT NO. RGV-RGC-1011
1.10 ACRES OF LAND, MORE OR LESS,	§	RGV-RGC-1011E
SITUATED IN STARR COUNTY, TEXAS;	§	
AND CONCEPTION GUERRA, ET AL.	§	

**UNITED STATES' RESPONSE TO THE COURT'S ORDER
REQUESTING STATUS UPDATE**

COMES NOW the United States of America ("United States"), and files this response to the District Court's October 17, 2018 Order to inform the Court on the status of the case:

PROCEDURAL BACKGROUND

A. Civil No. 7:08-cv-064 Proceedings

On February 8, 2008, the United States filed Civil No. 7:08-cv-064, condemning a temporary (180-day) right-of-entry easement—identified as Tract RGV-RGC-1011—for the border fence project. On March 14, 2008, the United States deposited \$100.00 into the Court's registry as its estimated just compensation for this temporary easement. [Doc. No. 8, in Civil No. 7:08-cv-064]. Under the terms of this Court's order, this easement began on March 25, 2008 and expired on September 6, 2008. [Doc. No. 9, at 7, in Civil No. 7:08-cv-064]. At the time of taking,

the United States believed that Arnulfo Guerra, Jr. may have an interest in the land burdened by the temporary right-of-entry easement. [Doc. No. 2-1, at 14, in Civil No. 7:08-cv-064].

The United States filed two prior status reports. On October 15, 2012, the United States filed a status report explaining that consolidation of this case (Civil No. 7:08-cv-064) with the subsequent takings case (Civil No. 7:08-cv-248) was appropriate because both cases involved the same landowner. [Doc. No. 14, in Civil No. 7:08-cv-064]. On August 30, 2013, the United States filed a status report stating that it had not yet finalized its title commitment and policies in order to file the ADT. [Doc. No. 16].

B. Civil No. 7:08-cv-248 Proceedings

On August 7, 2008, the United States filed Civil No. 7:08-cv-248, condemning (i) a fee simple interest in 0.29 acres, more or less, identified as Tract RGV-RGC-1011; and (ii) a temporary 24-month right-of-way easement in 0.81 acres, more or less, identified as Tract RGV-RGC-1011E. On July 2, 2008, the United States deposited \$19,800.00 into the Court's registry as its estimated just compensation for Tracts RGV-RGC-1011 and RGV-RGC-1011E.¹ [Doc. No. 4, in Civil No. 7:08-cv-248]. At the time of taking, the United States believed that Arnulfo Guerra, Jr., among others, owned these tracts. [Doc. No. 2-2, at 17, in Civil No. 7:08-cv-249].

The United States filed two prior status reports in this case. On October 15, 2012, the United States filed a status report explaining the need to consolidate this case (Civil No. 7:08-cv-248) with Civil No. 7:08-cv-064 because the cases involve the same tracts of land and common ownership. [Doc. No. 12, in Civil No. 7:08-cv-248]. The United States also explained that the issue

¹ See 40 U.S.C. § 3114(b) ("On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration—(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.").

of just compensation remained unresolved, and that an Amended Declaration of Taking (“ADT”) needed to be filed to clarify the description and plat of the land taken. [*Id.*]. On August 29, 2013, the United States filed a status report stating that it could not yet predict when the ADT would be filed due to delays in obtaining the final surveys and title work for the subject property. [Doc. No. 13, in Civil No. 7:08-cv-248].

C. Consolidation and Subsequent Proceedings

On October 9, 2014, the United States filed its unopposed motion to consolidate Civil No. 7:08-cv-064 and Civil No. 7:08-cv-248 because these cases are related border fence actions involving common tracts and common ownership. [Doc. No. 18].² On November 25, 2014, this Court granted the motion to consolidate the two cases under consolidated Civil No. 7:08-cv-064.

ANTICIPATED NEXT STEPS

The United States plans to take the following steps to resolve this case:

(1) File an Amended Declaration of Taking (“ADT”) and Amended Complaint in Condemnation (“Amended Complaint”) in order to (a) clarify the description and plat of the land acquired based on finalized surveys and title examination results; (b) clarify that the land taken did not include water distribution and drainage systems; and (c) add as defendants any new parties identified as having an interest.

(2) Resolve all outstanding issues with the landowners, including just compensation, once title ownership has been confirmed via the ADT.

(3) The United States advises the Court that, in FY 2018, it expects to acquire additional property from this landowner for the border fence project.

² All references to documents filed after October 9, 2014 refer to Consolidated Civil No. 7:08-cv-064.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that our office will send a copy of this document on December 7 and/or 10, 2018 via regular mail to all parties who have made an appearance and/or for whom the United States has contact information.

s/ Christopher D. Pineda
CHRISTOPHER D. PINEDA
Assistant United States Attorney